

ESTTA Tracking number: **ESTTA206667**

Filing date: **04/23/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049029
Party	Defendant Review Publishing Limited Partnership
Correspondence Address	Review Publishing Limited Partnership 1500 Sansom Street, 3rd Floor Philadelphia, PA 19102 UNITED STATES
Submission	Other Motions/Papers
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Signature	/Jacob Bishop/
Date	04/23/2008
Attachments	TASTE OF SOUTH JERSEY Motion to Dismiss for Insufficient Service of Process.pdf (3 pages)(102342 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DAVID. J. LONG, JR.

Petitioner,

v.

REVIEW PUBLISHING
LIMITED PARTNERSHIP

Registrant.

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Cancellation No. 92/049,029

MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS

Registrant, Review Publishing Limited Partnership, moves to disnaiss this cancellation proceeding for insufficient service of process, because Petitioner, David J. Long, Jr., failed to serve Registrant with a copy of the cancellation petition in the manner required by Rules 2.111(b) and 2.119(b). In addition, Registrant respectfully requests that the Board suspend all matters that are not germane to this motion pursuant to Rule 2.127(d).

The Board may not institute a cancellation proceeding unless the cancellation petition has been properly served on the owner of record for the registration. *See Springfield Inc. v. XD*, 86 USPQ2d 1063, 1064 (TTAB 2008) (precedential decision). A cancellaticn petition may be served by “electronic transmission,” but only if the parties have “mutually agreed” to accept service in this manner. Rule § 2.119(b)(6). Petitioner failed to comply with this requirement.

When Petitioner filed his petition he checked the applicable box on the ESTTA form to indicate that he had effected service on Registrant. (Otherwise, ESTTA would not have allowed Petitioner to complete the electronic filing process that resulted in the institution of this proceeding.) ESTTA generated a certificate of service which states that “a copy of this paper has

been served upon all parties, at their address of record by Facsimile or email (by agreement only) on this date.” Petitioner did not comply with the service requirements set forth in Rules 2.111(b) and 2.119(b)(6), because Registrant never agreed to accept service by facsimile or email. In fact, Petitioner never attempted to contact Registrant to determine if it would be willing to accept service by facsimile, email, or any other electronic transmission.¹

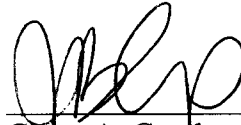
“Proof of service is meaningless in the absence of actual service in accordance with the statements contained in the proof of service.” *Springfield Inc. v. XD*, 86 USPQ2d at 1064. In this case, the petition for cancellation included a certificate of service, but the statements made in the certificate were inaccurate. Because Petitioner did not comply with the service requirement of the rules, the petition for cancellation should not have received a filing date and this proceeding should not have been instituted. *See id.*

¹ In the alternative, a cancellation petition may be served (1) by delivering a copy of the paper to the person served; (2) by leaving a copy at the person’s usual place of business; (3) by leaving a copy at the person’s residence (if the person does not have a usual place of business); (4) by sending a copy to the person by first class mail or U.S. Express Mail; or (5) by sending a copy to the person by overnight courier. Rule § 2.119(b)(1)-(5).

There is no indication that the Petitioner sent the cancellation petition to the Registrant by personal delivery, by leaving a copy at the Registrant’s business or residential address, or by sending a copy by first class mail, U.S. Express Mail, or overnight courier. As discussed above, the certificate of service only alleges that the cancellation petition was served by “facsimile or email.” Thus, the filing would still be improper even if the Petitioner actually used one of these other methods of delivery, because these other methods were not mentioned in the certificate of service that was submitted with the cancellation petition. *See Springfield, Inc.*, 86 USPQ2d at 1064 n.3 (“the Board will not institute an opposition or cancellation where there is no proof of service, even though there may have been actual service.”)

Respectfully submitted,

Attorneys for Registrant
REVIEW PUBLISHING
LIMITED PARTNERSHIP

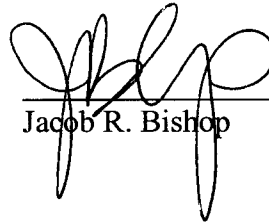


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Dated: April 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Registrant's Motion to Dismiss for Insufficient Service of Process has been duly served by mailing such copy first class, postage prepaid, to David J. Long, Jr., 2050 Delsea Drive, Sewell, NJ 08080 on April 23, 2008.



Jacob R. Bishop